

## Ch. V (7-1-02 Edition)

not including 50,000,  
line miles of any city,  
place with a population  
not including 500,000,

line miles of any city  
of 500,000 or greater,  
the latest available  
census.

commodities shall be consid-  
ered to come from "normal rural  
sources" within the specified  
distances from the establish-  
ment if

within such specified

farm assemblers or other  
through which the com-  
modity moves, which are  
specified distances and lo-  
cated in the open country or in a rural

farm assemblers or other  
not located in the open  
country or in a rural com-  
munity pro-  
vided that the  
commodity was produced on farms  
within such specified distances.

or determining wheth-  
er commodities are re-  
ceived from normal rural sources of  
the last preceding cal-  
endar month in which operations were  
carried on for two workweeks or more,  
such time as an es-  
tablishment has operated for such a  
calendar month the period shall be the  
time during which it has been in oper-

age of commodities re-  
ceived from normal rural sources of  
supply within the specified distances  
measured by weight, volume  
or other physical unit of measure, ex-  
cept that dollar value shall be used if  
different commodities received in the  
establishment are customarily meas-  
ured in physical units that are not  
comparable.

Sec. 1067, 29 U.S.C. 213(a)

"production" as used in  
section 7 of the Fair Labor

employed by an es-  
tablishment only recognized as a  
calendar month not more

## Wage and Hour Division, Labor

than five employees (including such an  
establishment which sells products and  
services used in the operation of a  
farm) shall be regarded as employed  
within the "area of production," with-  
in the meaning of section 13(a)(17) of  
the Fair Labor Standards Act, if the  
establishment by which he is employed  
is located in the open country or in a  
rural community and 95 percent of the  
agricultural commodities received by  
the establishment for storage or for  
market come from normal rural  
sources of supply within the following  
air-line distances from the establish-  
ment:

(1) With respect to grain and soy-  
beans—50 miles;

(2) With respect to any other agricul-  
tural commodities—20 miles.

(b) For the purpose of this section:

(1) "Open country or rural commu-  
nity" shall not include any city, town,  
or urban place of 2,500 or greater popu-  
lation or any area within:

(i) One air-line mile of the city, town,  
or urban place with a population of  
2,500 up to but not including 50,000, or

(ii) Three air-line miles of any city,  
town, or urban place with a population  
of 50,000 up to but not including 500,000,  
or

(iii) Five air-line miles of any city  
with a population of 500,000 or greater,  
according to the latest available  
United States Census.

(2) The commodities shall be consid-  
ered to come from "normal rural  
sources of supply" within the specified  
distances from the establishment if  
they are received: (i) From farms with-  
in such specified distances, or (ii) from  
farm assemblers or other establish-  
ments through which the commodity  
customarily moves, which are within  
such specified distances and located in  
the open country or in a rural commu-  
nity, or (iii) from farm assemblers or  
other establishments not located in the  
open country or in a rural community  
provided it can be demonstrated that  
the commodities were produced on  
farms within such specified distances.

(3) The period for determining wheth-  
er 95 percent of the commodities are re-  
ceived from normal rural sources of  
supply shall be the last preceding cal-  
endar month in which operations were  
carried on for two workweeks or more,

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except that until such time as an es-  
tablishment has operated for such a  
calendar month the period shall be the  
time during which it has been in oper-  
ation.

(4) The percentage of commodities re-  
ceived from normal rural sources of  
supply within the specified distances  
shall be determined by weight, volume  
or other physical unit of measure, ex-  
cept that dollar value shall be used if  
different commodities received in the  
establishment are customarily meas-  
ured in physical units that are not  
comparable.

(Sec. 13(a)(17), 52 Stat. 1067, as amended, sec.  
9, 75 Stat. 71; 29 U.S.C. 213(a)(17))

**§536.4 Petition for amendment of reg-  
ulations.**

Any interested person or association  
wishing a revision of any section of  
this part may submit in writing to the  
Administrator a petition for amend-  
ment thereof, setting forth the changes  
desired and the reasons for proposing  
them. If upon inspection of the petition  
the Administrator believes that rea-  
sonable cause for amendment of the  
regulations is set forth, the Adminis-  
trator will either schedule a hearing  
with notice to interested parties or will  
make other provisions for affording in-  
terested parties an opportunity to  
present their views in support of or op-  
position to the proposed change.

**PART 541—DEFINING AND DELIM-  
ITING THE TERMS "ANY EM-  
PLOYEE EMPLOYED IN A BONA  
FIDE EXECUTIVE, ADMINISTRA-  
TIVE, OR PROFESSIONAL CAPAC-  
ITY (INCLUDING ANY EMPLOYEE  
EMPLOYED IN THE CAPACITY OF  
ACADEMIC ADMINISTRATIVE  
PERSONNEL OR TEACHER IN ELE-  
MENTARY OR SECONDARY  
SCHOOLS), OR IN THE CAPACITY  
OF OUTSIDE SALESMAN"**

**EFFECTIVE DATE NOTE:** The President's  
Memorandum of January 29, 1981 (45 FR  
1127, Feb. 3, 1981), directed Federal agencies  
to postpone for sixty days from January 29,  
1981, the effective date of all regulations that  
they had promulgated in final form and had  
scheduled to become effective during such  
sixty day period.





## Pt. 541

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Several sections in part 541 were revised at 46 FR 2012, Jan. 13, 1981, and the effective date subsequently postponed. For further explanation, see the notes following the text of affected sections in this part.

## Subpart A—General Regulations

## Sec.

- 541.0 Terms used in regulations.
- 541.1 Executive.
- 541.2 Administrative.
- 541.3 Professional.
- 541.5 Outside salesman.
- 541.5a Special provision for motion picture producing industry.
- 541.5b Equal pay provisions of section 5(d) of the act apply to executive, administrative, and professional employees, and to outside salesmen.
- 541.5d Special provisions applicable to employees of public agencies.
- 541.6 Period for amendment of regulations.
- 541.82 Special provision for motion picture producing industry.

## Subpart 3—Interpretations

- 541.99 Introductory statement.

EMPLOYEE EMPLOYED IN A BONA FIDE  
EXECUTIVE CAPACITY

- 541.101 General.
- 541.102 Management.
- 541.103 Primary duty.
- 541.104 Department or subdivision.
- 541.105 Two or more other employees.
- 541.106 Authority to hire or fire.
- 541.107 Discretionary powers.
- 541.108 Work directly and closely related.
- 541.109 Emergencies.
- 541.110 Occasional tasks.
- 541.111 Nonexempt work generally.
- 541.112 Percentage limitations on non-exempt work.
- 541.113 Sole-charge exception.
- 541.114 Exception for owners of 20-percent interest.
- 541.115 Working foremen.
- 541.116 Trainees, executive.
- 541.117 Amount of salary required.
- 541.118 Salary basis.
- 541.119 Special proviso for high salaried executives.

EMPLOYEE EMPLOYED IN A BONA FIDE  
ADMINISTRATIVE CAPACITY

- 541.201 Types of administrative employees.
- 541.202 Categories of work.
- 541.203 Nonmanual work.
- 541.205 Directly related to management policies or general business operations.
- 541.206 Primary duty.
- 541.207 Discretion and independent judgment.
- 541.208 Directly and closely related.

- 541.309 Percentage limitations on non-exempt work.
- 541.310 Trainees, administrative.
- 541.311 Amount of salary or fees required.
- 541.312 Salary basis.
- 541.313 Fee basis.
- 541.314 Special proviso for high salaried administrative employees.
- 541.315 Elementary or secondary schools and other educational establishments and institutions.

EMPLOYEE EMPLOYED IN A BONA FIDE  
PROFESSIONAL CAPACITY

- 541.300 General.
- 541.301 Learned professions.
- 541.302 Artistic professions.
- 541.303 Computer related occupations under Public Law 101-583.
- 541.304 Primary duty.
- 541.305 Discretion and judgment.
- 541.306 Predominantly intellectual and varied.
- 541.307 Essential part of and necessarily incident to.
- 541.308 Nonexempt work generally.
- 541.309 20-percent nonexempt work limitation.
- 541.310 Trainees, professional.
- 541.311 Amount of salary or fees required.
- 541.312 Salary basis.
- 541.313 Fee basis.
- 541.314 Exception for physicians, lawyers, and teachers.
- 541.315 Special proviso for high salaried professional employees.

EMPLOYEE EMPLOYED IN THE CAPACITY OF  
OUTSIDE SALESMAN

- 541.500 Definition of "outside salesman."
- 541.501 Making sales or obtaining orders.
- 541.502 Away from his employer's place of business.
- 541.503 Incidental to and in conjunction with sales work.
- 541.504 Promotion work.
- 541.505 Driver salesmen.
- 541.506 Nonexempt work generally.
- 541.507 20-percent limitation on nonexempt work.
- 541.508 Trainees, outside salesmen.

## SPECIAL PROBLEMS

- 541.600 Combination exemptions.
- 541.601 Special provision for motion picture producing industry.
- 541.602 Special proviso concerning executive and administrative employees in multi-store retailing operations.

## APPENDIX TO PART 541—OCCUPATIONAL INDEX

AUTHORITY: 29 U.S.C. 213; Pub. L. 101-583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1949-03 Comp., p. 1004); Secretary's Order No. 12-71 (26 FR 3735).

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shall be deemed to meet all the requirements of this section.

## 1.3 Professional.

The term *employee employed in a bona fide professional capacity* in section 641(1) of the Act shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(3) Teaching, tutoring, instructing, or supervising in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he is employed; or

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field, as provided in § 641.303; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 30 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than \$170 per week (\$150 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (or \$200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (2), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further*, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section, and who is compensated on an hourly basis at a rate in excess of six times the minimum wage provided by section 6 of the Act.

38 FR 11690, May 7, 1973, as amended at 40 FR 1092, Feb. 12, 1975; 51 FR 3574, Oct. 9, 1992.

See Next



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by which employed: Pro-  
an employee who is com-  
a salary or fee basis at a  
less than \$250 per week (\$200  
employed by other than the  
Government in Puerto Rico,  
Islands, or American  
clusive of board, lodging, or  
ilities, and whose primary  
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bed in paragraph (a) of this  
ch includes work requiring  
e of discretion and inde-  
gment, shall be deemed to  
e requirements of this sec-

May 7, 1973, as amended at 40  
19, 1975]

DATE NOTE: Paragraph (e) in-  
ised at 46 FR 3013, Jan. 13, 1981.  
e with the President's Memo-  
uary 29, 1981 (46 FR 11227, Feb.  
1981). Date was postponed in-  
6 F. 2, Feb. 12, 1981.  
pa. ph (e) set forth above  
ect pending further action by  
agency. The text of the post-  
ion appears below.

Administrative.

\* \* \* \* \*

is compensated for his services  
r fee basis at a rate of not less  
week beginning February 13,  
er week beginning February 13,  
week beginning February 13,  
er week beginning February 13,  
yed by other than the Federal  
in Puerto Rico, the Virgin Is-  
merican Samoa), exclusive of  
, or other facilities, or  
the case of academic adminis-  
nel, is compensated for serv-  
ed by paragraph (e)(1) of this  
a salary basis which is at least  
erence salary for teachers in  
ystem, educational establish-  
tution by which employed: Pro-  
employee who is compensated  
e fee basis at a rate of not less  
week beginning February 13,  
er week beginning February 13,  
week beginning February 13,  
er week beginning February 13,  
yed by other than the Federal  
in Puerto Rico, the Virgin Is-  
merican Samoa), exclusive of  
, or other facilities, and whose  
cor of the performance of  
d: graph (a) of this sec-  
ct: work requiring the exer-  
1 and independent judgment.

## Wage and Hour Division, Labor

shall be deemed to meet all the requirements  
of this section.

## § 541.3 Professional.

The term *employee employed in a bona fide \* \* \* professional capacity* in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he is employed; or

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field, as provided in § 541.303; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

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(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than \$170 per week (\$150 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities; Provided, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section; Provided further, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (or \$200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section; Provided further, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6½ times the minimum wage provided by section 6 of the Act.

[38 FR 11390, May 7, 1973, as amended at 40 FR 7092, Feb. 19, 1975; 57 FR 46744, Oct. 9, 1992]



## §541.5

**EFFECTIVE DATE NOTE:** Paragraph (e) in §541.3 was revised at 46 FR 3014, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of paragraph (e) set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

## §541.3 Professional.

(e) Who is compensated for services on a salary or fee basis at a rate of not less than \$250 per week beginning February 13, 1981 and \$280 per week beginning February 13, 1983 (\$225 per week beginning February 13, 1981 and \$250 per week beginning February 13, 1983 if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degrees for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than \$333 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 (or \$280 per week beginning February 13, 1981 and \$285 per week beginning February 13, 1983 if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

## §541.5 Outside salesman.

The term *employee employed \* \* \* in the capacity of outside salesman* in section 13(a)(1) of the Act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regu-

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larly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the Act, or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a)(1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided*, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

## §541.5a Special provision for motion picture producing industry.

The requirement of §§541.1, 541.2, and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$200 a week (exclusive of board, lodging, or other facilities).

**EFFECTIVE DATE NOTE:** Section 541.5a was revised at 46 FR 3014, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of §541.5a set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

## §541.5a Special provision for motion picture producing industry.

The requirement of §§541.1, 541.2, and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 (exclusive of board, lodging, or other facilities).

## §541.5b Equal pay provisions of section 6(d) of the act apply to executive, administrative, and professional employees, and to outside salesmen.

Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt

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from the minimum wage and pay provisions as bona fide administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teaching elementary or secondary school) the capacity of outside salesman section 13(a)(1) of the act. This, ample, where an exempt administrative employee and another employee the establishment are performing substantially "equal work," the discrimination prohibitions of section are applicable with respect to a differential between those two employees.

## §541.5d Special provisions as to employees of public agency.

(a) An employee of a public who otherwise meets the requirements of §541.118 shall not be disqualified from exemption under §§541.1, 541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or custom, or by a policy or practice established pursuant to principles of accountability, under which employee accrues personal leave leave and which requires the agency employee's pay to be reduced without pay for absences for reasons or because of illness of less than one work-day accrued leave is not used by an employee because—

(1) permission for its use has been sought or has been sought and granted; or

(2) accrued leave has been exhausted.

(3) the employee chooses to work without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-reduction shall not disqualify the employee from being paid "on a salary basis" in the workweek in which the reduction occurs and for which the employee's pay is accordingly reduced (57 FR 37677, Aug. 19, 1992)

## §541.6 Petition for amendment of regulations.

Any person wishing a revision of the terms of the foregoing



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from his employ-  
business in:  
within the meaning  
Act, or  
or contracts for  
use of facilities for  
on will be paid by  
ert and  
work of a nature  
described in paragraph  
section do not ex-  
the hours worked in  
exempt employees  
provided. That work  
al to and in con-  
employee's own out-  
cursions, including in-  
and collections.  
ded as nonexempt

from the minimum wage and overtime  
pay provisions as bona fide executive,  
administrative, and professional em-  
ployees (including any employee em-  
ployed in the capacity of academic ad-  
ministrative personnel or teacher in el-  
ementary or secondary schools), or in  
the capacity of outside salesmen under  
section 13(a)(1) of the act. Thus, for ex-  
ample, where an exempt administra-  
tive employee and another employee of  
the establishment are performing sub-  
stantially "equal work," the sex dis-  
crimination prohibitions of section 5(d)  
are applicable with respect to any wage  
differential between those two employ-  
ees.

**§541.5d Special provisions applicable  
to employees of public agencies.**

(a) An employee of a public agency  
who otherwise meets the requirements  
of §541.118 shall not be disqualified  
from exemption under §§541.1, 541.2, or  
541.3 on the basis that such employee is  
paid according to a pay system estab-  
lished by statute, ordinance, or regula-  
tion, or by a policy or practice estab-  
lished pursuant to principles of public  
accountability, under which the em-  
ployee accrues personal leave and sick  
leave and which requires the public  
agency employee's pay to be reduced or  
such employee to be placed on leave  
without pay for absences for personal  
reasons or because of illness or injury  
of less than one work-day when ac-  
crued leave is not used by an employee  
because—

- (1) permission for its use has not been  
sought or has been sought and denied;
- (2) accrued leave has been exhausted;

or

- (3) the employee chooses to use leave  
without pay.

(b) Deductions from the pay of an  
employee of a public agency for ab-  
sences due to a budget-required fur-  
lough shall not disqualify the employee  
from being paid "on a salary basis" ex-  
cept in the workweek in which the fur-  
lough occurs and for which the employ-  
ee's pay is accordingly reduced.

[37 FR 37677, Aug. 19, 1962]

**§541.5 Petition for amendment of reg-  
ulations.**

Any person wishing a revision of any  
of the terms of the foregoing regula-

tions may submit in writing to the Ad-  
ministrator a petition setting forth the  
changes desired and the reasons for  
proposing them. If, upon inspection of  
the petition, the administrator be-  
lieves that reasonable cause for amend-  
ment of the regulations is set forth,  
the Administrator will either schedule  
a hearing with due notice to interested  
parties, or will make other provision  
for affording interested parties an op-  
portunity to present their views, either  
in support of or in opposition to the  
proposed changes. In determining such  
future regulations, separate treatment  
for different industries and for dif-  
ferent classes of employees may be  
given consideration.

**§541.52 Special provision for motion  
picture producing industry.**

The requirements of §§541.1, 541.2,  
and 541.3 that the employee be paid "on  
a salary basis" shall not apply to an  
employee in the motion picture pro-  
ducing industry who is compensated at  
a base rate of at least \$250 a week (ex-  
clusive of board, lodging, or other fa-  
cilities).

[40 FR 1392, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Section 541.52 was  
removed at 46 FR 3014, Jan. 13, 1981, in ac-  
cordance with the President's Memorandum  
of January 29, 1961, 46 FR 11227, Feb. 4, 1981.  
The effective date of the removal was post-  
poned indefinitely at 46 FR 11971, Feb. 12,  
1981.

The text of §541.52 set forth above remains  
in effect pending further action by the  
issuing agency.

**Subpart 3—Interpretations**

**§541.99 Introductory statement.**

(a) Section 13(a)(1) of the Fair Labor  
Standards Act, as amended, exempts  
from the wage and hour provisions of  
the act "any employee employed in a  
bona fide executive, administrative, or  
professional capacity (including any  
employee employed in the capacity of  
academic administrative personnel or  
teacher in elementary or secondary  
schools), or in the capacity of outside  
salesman (as such terms are defined  
and delimited from time to time by  
regulations of the Secretary, subject to  
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## § 541.101

Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 percent of his hours worked in the workweek are devoted to such activities." The requirements of the exemption under this section of the act are contained in subpart A of this part.

**EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE CAPACITY**

## § 541.101 General.

The duties and responsibilities of an exempt executive employee are described in paragraphs (a) through (d) of § 541.1. Paragraph (e) of § 541.1 contains among other things, percentage limitations on the amount of time which an employee may devote to activities "which are not directly and closely related to the performance of the work described in paragraphs (a) through (d)" of that section. For convenience in discussion, the work described in paragraphs (a) through (d) of § 541.1 and the activities directly and closely related to such work will be referred to as "exempt" work, while other activities will be referred to as "nonexempt" work.

## § 541.102 Management.

(a) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

(b) For example, it is generally clear that work such as the following is exempt work when it is performed by an employee in the management of his department or the supervision of the employees under him: Interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing their

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work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; apportioning the work among the workers; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of the men and the property.

## § 541.103 Primary duty.

A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of his time in management would have management as his primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of his time in managerial duties, he might nevertheless have management as his primary duty if the other pertinent factors support such a conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor. For example, in some departments, or subdivisions of an establishment, an employee has broad responsibilities similar to those of the owner or manager of the establishment, but generally spends more than 50 percent of his time in production or sales work. While engaged in such work

## Wage and Hour Division, LC

he supervises other employees, the work of warehouse and men, approves advertising, merchandise, handles customer complaints, authorizes payment, performs other management the day-to-day operations will be considered to have as his primary duty. In the case of an employee in the day-to-day activities of a group of programmers and with the more complex or responsible programming will be considered to have management as his primary duty.

## § 541.104 Department or subdivision.

(a) In order to qualify as the employee's managerial duty be performed with respect to a subdivision in which he is employed, the subdivision must be a commonly recognized department or subdivision thereof. The phrase "commonly recognized department or subdivision" is intended to mean a subdivision which is intended to be a permanent collection of employees assigned from time to time to a job or series of jobs and a permanent status and in order properly to classify an employee as an executive he must be merely a supervisor of two or more employees; nor is it sufficient that he merely participates in the management of the unit. He must be in charge of and have as his primary management of a recognized subdivision which has a continuing function.

(b) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a commonly recognized department or subdivision of a department. For example, it is clear that where an employee is in charge of a department which comprises more than one subdivision, the employee in charge of the establishment may be in charge of a subdivision of the establishment. Questions arise in cases involving supervisors outside the employer's establishment, move from place to place, or have different subordinates at different times.

(c) In such instances, in determining whether the employee is in charge of a commonly recognized unit with a continuing function, it is the division's position that the unit supervised need not be located within the employer's